United States Court of Appeals

for the Second Circuit

APPENDIX

76-2100 Original

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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GUSTAVE ZURAK, WILLIAM MC AULIFFE, SALVATORE ZAMBUTO, WILLIE MACK, BENJAMIN SANTIAGO, MARTIN HALPERN, on behalf of themselves and all others similarly situated,

Plaintiffs-Appellees,

-against-

PAUL J. REGAN, BENJAMIN WARD, RAYMON DORSEY, WILLIAM BARNWELL, FRANK CALDWELL, MAURICE DEAN, MARTIN GILBRIDGE, FRANK GROSS, ADA JONES, MILTON LEWIS, JOHN MAFFUCCI, LOUIS PIERRO. JOHN QUINN, and ANGEL LUIS RIVERA, Commissioner of New York State Board of Parole, individually and in their official capacities,

Defendants-Appellants.

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P/S

APPENDIX

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants
Appellants
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PAGINATION AS IN ORIGINAL COPY

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

MARILYN LISI , being duly sworn, deposes and says that s he is employed in the office of the Attorney General of the State of New York, attorney for defendants-appellants herein. On the 28th day of September , 1976 , s he served the annexed upon the following named person :

Gordon Johnson, Esq.
The Legal Aid Society
15 Park Row
New York, New York

Attorney in the within entitled appeal by depositing a true and correct copy thereof, properly enclosed in a post-paid wrapper, in a post-office box regularly maintained by the Government of the United States at Two World Trade Center, New York, New York 10047, directed to said Attorney at the address within the State designated by him for that purpose.

Marilyn Lisi

Sworn to before me this
28th day of September , 1976

Assistant Attorney General
of the State of New York

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DOCKET ENTRIES

Date	Proceedings
08-14-75	1. Filed complaint and issued summons.
09-15-75	2. Filed plaintiffs affdvts and notice of motion for preliminary injunction, class action status and leave to proceed in forma pauperis - ret. 9-19-75
09-15-75	3. Filed plaintiffs memorandum in support of above motion.
09-19-75	4. Filed deft's affdvt. in opposition to motion for prel. injunction and class action determination.
09-29-75	5. Filed pltf's reply memorandum of law.
10-16-75	6. Filed summons and Marshals returns - served: Paul J. Regan, Chairman by Jerome L. Winters on 8-25-75, Raymond Dorsey on 10-1-75. Benjamin Ward by Jerome L. Winters on 8-25-75, Frank Gross by Jerome L. Winters on 8-25-75, Ada Jones by Jerome L. Winters on 8-25-75, Milton Lewis by Jerome L. Winters on 8-25-75, John Maffucci by Jerome L. Winters on 8-25-75, Louis Pierro by Jerome L. Winters on 8-25-75, John Quinn by Jerome L. Winters on 8-25-75, Angel Luis Rivera by Jerome L. Winters on 8-25-75, Martin Gilbridge by Jerome L. Winters on 8-25-75, Maurice Dean by Jerome L. Winters on 8-25-75, Frank Caldwell by Jerome L. Winters on 8-25-75, William Barnwell by Jerome L. Winters on 8-25-75, Louis J. Lefkowitz by Mortimer Sattler on 8-21-75
12-16-75	7. Filed pltf's affdvt and Notice of Motion for leave to intervene. Ret. 12-19-75
12-18-75	8. Filed pltf's affdvt for Writ of Habeas Corpus. Writ issued. Ret: 12-22-75. M. Halpern.
12-18-75	9. Filed pltf's affdvt for Writ of Habeas Corpus for Maitland Jones. Writ issued. Ret: 12-22-75.
12-18-75	10. Filed pltf's affdvt for Writ of Habeas Corpus for Salvadore Zambuto. Writ issued. Ret: 12-22-75.

DOCKET ENTRIES

Date	Proceedings
12-18-75	11. Filed pltf's affdvt for Writ of Habeas Corpus for Willie Mack. Writ issued. Ret. 12-22-75.
12-18-75	12. Filed pltf's affdvt for Writ of Habeas for Benjamin Santiago. Writ issued. Ret. 12-22-75.
12-22-75	13. Filed pltff's affdvt of Law and Fact in support of motion to intervene.
12-22-75	14. Filed Memo Endorsement on pltff's Notice of Motion to intervene filed 12-16-75. The Motion is unopposed and accordingly is granted. Carter, J. (m/n).
01-08-75	15. Filed Defts motion to quash subpoena served on Deft. Raymond Dorsey which required Det to produce all files, reports, act pre-taining to certain persons as indicated. Ret: 01-28-76.
01-08-76	16. Filed Defts Memo of Law.
01-09-76	Filed Writ of H/C Copus Ad Tert. of Benjamin Santiago...So Ordered-Carter, J. Writ Satisfied...So Ordered. Carter, J. 12-22-75 Fld Writ of H/C Copur Ad Test of Willie Mack... So Ordered Carter, J. (true copy) Writ Satisfied...So Ordered...Carter, J. 12-22-75
01-09-76	Fld Writ of H/C Cpus Ad Test of Sal. Zambuto... So Ordered...Carter, J. Writ Satisfied... So Ordered...Carter, J. 12-22-75
01-09-76	Fld Writ of H/C Corpus Ad Terst of M. Halpern.. So Ordered...Carter, J. Writ Satisfied... Carter, J. 12-23-75.
01-09-76	Fld Writ of H/C Corpus ad Test... of M. Jones.. So Ordered...Carter, J. Writ satisfied...So Ordered. Carter, J. 12-23-75.
01-13-76	Filed Pltff's affdvt of Gordon J. Johnson in opposition to Defts motion to quash a subpoena served on Deft Raymond Dorsey.
01-13-76	Filed Pltff's Memorandum of Law.
01-30-76	Fld Opinion #43812...Accordingly, Deft's motion to quash is hereby denied. The subpoenaed filed are to be produced forthwith. The Parole Bd may, in its discretion, delete any reference

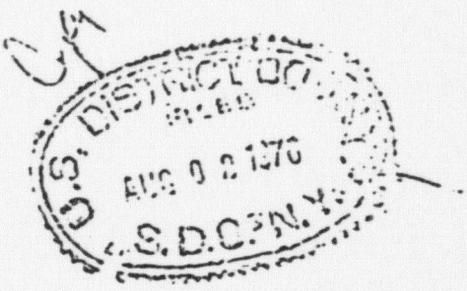
DOCKET ENTRIES

Date	Proceedings
	in the filed to informants where such reference would endanger the safety of these individuals, but where such deletions are made, the matter must be presented to the court in camera for a determination as to the bona fides of the reduction...Carter, J. So Ordered...
02-17-76	Fld post hearing memorandum in opposition to Pltff's application for a preliminary injunction and in support of Deft's motion to dismiss the compl.
03-15-76	Fld Defts' Reply Memo to pltffs' Post Hearing Memo.
03-31-76	Fld Pltffs' Suppl Post Hearing Memo in support of motion for prel. inj.
08-03-76	Defts supplemental memo of law in opposition to pltff's application for preliminary injunction.
08-02-76	Fld Opinion 41904...Accordingly, with respect to pltffs' claims for inj relief, it is hereby ordered that: Defts institute appropriate procedures to insure that conditional release applications be processed in order of eligibility.. etc. The Board is to provide to each inmate whose application for conditional release is denied or deferred, etc...applicants for conditional release are to be accorded the right to a personal appearance before the Comm or Comms responsible for deciding on the disposition of his application...Action is to maintain as a class action on behalf of all inmates at the NYC Corr Institution for Men on Rikers Island who are now or will be eligible for conditional release...So Ordered... Carter, J.
08-16-76	Filed State Defts OSC with a stay.
08-19-76	Fld Pltffs' Notice of Motion to amend and Correct Judgment ent 8-2-76...ret. 9-3-76-10AM Rjm 519.

DOCKET ENTRIES

Date	Proceedings
08-24-76	Fld Pltff's affdvt in opposition to defts' application for a stay of order dtd 7-30-76.
08-24-76	Fld Pltffs' memo of law in opposition to defts' motion for a stay pending appeal.
08-24-76	Fld memo End on bk of motion fld 8-16-76- Ordered that a stay against that portion of Judge Carter's order which req that each applicant for conditional release be accorded the right to a personal appearance before the Comm or Commissioners responsible for deciding on the disposition of his application, by granted pending appeal, provided that the petitioner filed a Notice of Appeal and a motion for expedited appeal by 8-27-76... This order is entered w/o prej to the respondent seeking to have the stay vacated in the event that the motion for an expedited appeal is denied...So Ordered...Werker, J.
08-25-76	Fld Stip Between ptys...Re: fingerprint carts of Zurak and Czubak..etc
08-25-76	Fld Affdvt of G. Zurak dtd 3-12-76.
08-25-76	Fld Stip betw. ptys that copies of papers are to be included in the record of the hearing held before the court on 12-22-75.
08-27-76	Filed defts notice of appeal to the USCA from the order entered 8-2-76 from every part thereof. Copy sent to: Gordon J. Johnson, The Legal Aid Society, Parole Revocation Defense Unit, 15 Park Row, 19th Floor, New York, New York 10038.
09-01-76	Defts post hearing memo in support of motion for preliminary injunction.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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GUSTAVE ZURAK, WILLIAM MC AULIFFE, SALVATORE ZAMBUTO, WILLIE MACK, BENJAMIN SANTIAGO, MARTIN HALPERN, on behalf of themselves and all others similarly situated,

Plaintiffs,

- against -

PAUL J. REGAN, BENJAMIN WARD, RAYMOND DORSEY, WILLIAM BARNWELL, FRANK CALDWELL, MAURICE DEAN, MARTIN GILBRIDE, FRANK GROSS, ADA JONES, MILTON LEWIS, JOHN MAFFUCCI, LOUIS PIERRO, JOHN QUINN, and ANGEL LUIS RIVERA, Commissioner of New York State Board of Parole, individually and in their official capacities,

Defendants.

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Assistant Attorney General
Attorney for Defendants

CARTER, District Judge

O P I N I O N

I

New York Penal Law Section 70.40(2), applicable only to individuals serving definite sentences, provides:

New York Penal Law Section 70.40(2)

> "2. Definite sentence. A person who is serving one or more than one definite sentence of imprisonment with a term or aggregate term in excess of ninety days may, if he so requests, be conditionally released from the institution in which he is confined at any time after service of sixty days of that term, exclusive of credits allowed under subdivisions four and six of section 70.30. In computing service of sixty days, the credit allowed for jail time under subdivision three of section 70.30 shall be calculated as time served. Conditional release from such institution shall be in the discretion of the parole board, and shall be upon such conditions as may be imposed by that board in accordance with the provisions of the correction law.
>
> "Conditional release shall interrupt service of the sentence or sentences and the remaining portion of the term or aggregate term shall be held in abeyance. Every person so released shall be under the supervision of the parole board for a period of one year. Compliance with the conditions of release during the period of supervision shall satisfy the portion of the term or aggregate term that has been held in abeyance."

Under New York Law definite sentences are those that do not exceed one year. The maximum penalty for a crime classified as a misdemeanor is a term of imprisonment of one year or less, New York Penal Law §70.15, and persons guilty of Class D & E felonies may be sentenced to terms of imprisonment of one year or less, Id. §70.00 (4). These are definite sentences. Those of more than one year's imprisonment are indeterminate under New York Law, with a minimum of three years' imprisonment and a maximum of life imprisonment, and may be imposed only for crimes classified as felonies. Id. §70.00. A definite sentence is served in a county or regional correctional institution, while an indeterminate sentence must be served at a state prison. Id., §70.20.

The instant action attacks the constitutionality of the New York Penal Law as applied and seeks a preliminary injunction granting plaintiffs and the class they represent the right to appear in person before the Parole Board ("Board") in connection with the Board's consideration of their conditional release applications; mandating expedited consideration of such applications in conformity with the statutory eligibility date; requiring the Board to provide written reasons for their determinations

denying conditional release, and requiring that the Board indicate in writing the information relied upon in reaching their conclusions.

Plaintiffs are all inmates serving definite sentences of more than 90 days in the New York City Correctional Institution For Men on Rikers Island and who are now or will be eligible for conditional release pursuant to New York Penal Law §70.40 (2), and New York Correction Law §827. They seek class action determination which is unopposed.

At the hearing on the matter, Gustave Zurak, Benjamin Santiago, Salvatore Zambuto, Maitland Jones, Willie Mack and Martin Halpern--plaintiffs or witnesses for the plaintiffs--testified. Their testimony with respect to conditional release procedures at Rikers Island was generally to the same effect and may be summarized as follows. Shortly after arrival on Rikers Island, the witnesses were advised of the conditional release program, filed an application for release under the program, and were interviewed by a parole officer. The witnesses had not been given the opportunity to see what was in their files, and after the interview heard nothing further for a long time.

Zurak was notified in March, 1975, some four months after he filed his application that it had been denied. No reasons were given. Halpern applied in May, 1975, and in September was notified that his application had been deferred until November. On December 1, 1975, Halpern was offered conditional release but turned it down since his incarceration would end in any event before February, 1976. Santiago applied for conditional release early in June, 1975, was not interviewed until November, 1975, and as of the time of the hearing had heard nothing further. Zambuto applied for conditional release in April, 1975, and was notified in July, 1975 that his release had been denied. Jones had been at Rikers Island since May, 1975, but was not assigned to the New York City Correctional Institution For Men until June. He immediately applied for release, but some six months later had not yet been called for an interview with the parole officer.

The plaintiffs' version of events was verified in substantial part by the state's witnesses. Raymond E. Dorsey, Supervising Officer on Rikers Island has responsibility for administering the conditional release program. He and his staff endeavor to have the conditional release program explained to all potential eligibles, i.e., to

inmates serving 91 days or more, within the first week of their arrival at the institution. The eligible inmates are asked if they wish to make application for conditional release, and a record of those who wish to apply and those who do not is kept. Thereafter, a parole officer interviews the willing applicants. He takes down all information the inmates wish to provide, and based on what he is told during the interview, and on information in the inmate's file, a report is prepared and presented to the parole board "as soon as possible." The report of the parole officer includes a personal or social history of the inmate based on information gleaned from the inmate or contained in the probation report. Thus, the report includes information relative to the inmate's residence on release, job prospects, the inmate's sentence, offense, the amount of jail time served, and the date his sentence is to terminate, a summary of his prior record, and the officer's evaluation. The parole officer does no independent investigation and "makes no strong recommendation for or against." It is left pretty well up to the Commissioner to make a decision." (Tr.169). These reports, along with the inmates' files, are brought to the main parole board office in New York City each Friday. It should be noted that since September, 1975, each denied or deferred

application is accompanied by a written statement of reasons for the denial or deferral.

In 1974, 1,200 applicants sought conditional release. There are no memoranda or other written guidelines outlining how interviews are to be conducted. Nor are there any practices or regulations establishing the order in which arriving applicants are to be interviewed. It is done on a random basis without regard to amount of jail time served prior to sentence, and without regard to the date an inmate's sentence is to terminate. The interviewing officer does not show the contents of the inmate's file to the applicant. The Parole Commissioners acting on the applications do not make their decision pursuant to any written guidelines or criteria. It is all "an individual decision." Officer Dorsey testified that the Commissioners take into account the applicants' prior record, the nature of the instant offense, institutional adjustment and future plans and are primarily influenced by these factors in making their determinations. The Commissioners do not see the inmate and do not consult with the parole officer who interviewed the applicant and who filed a report on his application. Dorsey testified that it was impossible for his staff to process conditional release

applications so that they could be submitted to the Parole Board within the 60-day period of eligibility prescribed by the statute, since the backlog of applications was too great. His estimate was that the parole officers submitted their reports to the Parole Board between 60-90 days--or 30 days after the statute provides that conditional release may be granted.

II

Class Action Determination

Plaintiffs seek to pursue this action on their own behalf and on behalf of all others similarly situated. The putative class consists of all inmates incarcerated at the New York City Correctional Institution for Men on Rikers Island who are eligible or will be eligible for conditional release. The testimony indicates that the number of eligible inmates on Rikers Island who apply each year for conditional release is approximately 1,200. That number (and the class of eligible applicants designated by plaintiffs necessarily exceeds that 1,200 figure) clearly meets the test of numerosity under Rule 23(a)(1), F.R.Civ.P. See, e.g., Robertson v. National Basketball Ass'n, 389 F. Supp. 867 (S.D.N.Y. 1975); Davis v. Avco Corp., 371 F. Supp. 782 (N.D. Ohio 1974). Moreover, there is a factual nexus linking all

members of the putative class, and the impact of the implementation of §70.20(2) on them as the statute's intended beneficiaries is the same. Thus, the test of common questions of law and fact is met. F.R.Civ.P., Rule 23(a)(2). See, e.g., United States ex rel. Walker v. Mancusi, 338 F. Supp. 311, 315-16 (W.D. N.Y. 1971), aff'd on other grounds, 467 F. 2d 51 (2d Cir. 1972). The claims being asserted--the haphazard and chaotic administration of the conditional release program on Rikers Island, the absence of written guidelines as criteria for those with authority to grant or deny conditional release, denial of the right to a personal appearance before the Commissioner--meet the test of typicality, F.R.Civ.P., Rule 23(a)(3). See, e.g., Kohn v. Royall, Koegel & Wells, 59 F.R.D. 515, 521 (S.D.N.Y. 1973), appeal dismissed, 496 F. 2d 1094 (2d Cir. 1974). Finally, the class is fairly and adequately represented by plaintiffs and their counsel.

Accordingly, this action is maintainable as a Rule 23(b)(2) class action on behalf of all inmates at the New York City Correctional Institution for Men on Rikers Island who are now or will be eligible for conditional release pursuant to New York Penal Law §70.20(2).

III

It is settled in this circuit that a "prisoner's interest in prospective parole or 'conditional entitlement'" must be accorded due process protection. "Whether the immediate issue be release or revocation, the stakes are the same: conditional freedom versus incarceration." United States ex rel. Johnson v. Chairman of New York State Board of Parole, 500 F. 2d 925, 928 (2d Cir.), vacated and remanded sub nom. Regan v. Johnson, 419 U.S. 1015 (1974). The statutory grant is clear and is stated in unambiguous language entitling those inmates serving definite sentences of more than 90 days to apply for conditional release which may be granted at the discretion of the Parole Board and subject to such conditions as the Parole Board imposes. New York Penal Law, §70.40(2).

The state makes two arguments. First, it alleges that the "substantial interest" in the grant of parole found to exist in Johnson is not present with regard to the conditional release applicant. Parole Board statistics for 1972 on which the finding of a substantial interest was found to exist in Johnson showed that 75.4% of the inmates coming before the Board were granted parole. The 1974 statistics, however, revealed that of 2,578 conditional release applicants, only 746, or less than

29%, were granted release. Accordingly, the state argues that these statistics hardly give rise to any substantial expectation of release.

The state further argues that plaintiffs' due process rights must be viewed as minimal at best, since their incarceration must necessarily terminate within one year. Thus, defendants contend, while those serving indeterminate sentences of three years or more, who are eligible for parole, are granted a hearing before the Parole Board, plaintiffs' minimal due process entitlement is adequately met under present procedures.

At the hearing, Joseph J. Salo, Executive Secretary to the New York State Parole Board stated that parole hearings are explicitly required by state law and no hearing is held on conditional release applications because there is no statutory requirement that these applicants be granted a hearing. In colloquy with the court, Mr. Salo admitted that he could see no difference for such disparate treatment other than the strict requirement of the statute as to why a hearing should be held for those eligible for parole and not held for those eligible for conditional release. He added that "the only difference is that in '74 I don't know whether there were 25 or 26 hundred applicants for

conditional release [s]pread out over 62 counties" (Tr. 136), and that the members of the Parole Board could not travel over the whole state.

The evidence at the hearing demonstrates that present administration of the conditional release program on Rikers Island is chaotic. The applications are not processed in any order designed to insure submission to the Parole Board in at least a rough approximation to the dates of eligibility (that is, those with earlier eligibility dates being submitted to the Board before those with subsequent eligibility dates). The testimony also made clear that the parole staff deemed it impossible to get the applications processed and before the Board within 60 days of the inmate's incarceration. The statute requires only that the application be considered "at any time after service of sixty days." New York Penal Law §70.40(2). I do not read the statute as necessitating that the conditional release application be given Parole Board consideration on the 60th or 61st day, but only that procedures be instituted which will result in such consideration within a reasonable time after the 60th day when the inmate becomes eligible for conditional release. Since the term to be served is a maximum of one year, the legislature must have intended and contemplated reasonably

prompt action on these applications by the parole staff and by the Parole Board. Raymond Dorsey who is in charge of the conditional release program at Rikers Island testified that he needed 60-90 days to process applications. Due process is not an inflexible concept. See Morrissey v. Brewer, 408 U.S. 471 (1972). Provided procedures are adopted which will insure that applications are processed in order of eligibility, the 60-90 day period for processing the applications seems adequate, but any delay beyond 90 days appears to be unreasonable.

The conditional release procedures currently being employed, however, do seem clearly to violate basic due process requirements. Until only recently, the Parole Board's practice was to deny applications without giving reasons for such denials. Since September, 1976, new procedures have been instituted and the inmate is given, in a written statement from the Commissioner who reviewed his application, the reasons for denial of his release application. At the hearing, it was merely indicated that written reasons now accompany the denial of each application. Insofar as the current procedure requires the Commissioner to include in each application which is denied a specific and meaningful statement of reasons and the facts underlying the denial, due process requirements have been

met. Haymes v. Regan, 525 F. 2d 540, 544 (2d Cir. 1975).[1]

That brings us to the only remaining issue -- whether applicants for conditional release must be accorded a hearing before the official who decides on such applications. Here the state has, pursuant to §70.20(2) of the New York Penal Law, extended an expectation of liberty, if sought, to those inmates serving definite sentences. Due process unquestionably requires that fair procedures be utilized to determine whether that expectation is to be realized. Franklin v. Shields, 399 F. Supp. 309, 316 (W.D. Va. 1975). The testimony adduced at the hearing demonstrated unequivocally that the conditional release applicant is not receiving fair treatment under present procedures. He is interviewed by a parole officer, but because of staff constraints, the parole officer conducts no independent investigation, instead relying on what the inmate tells him and what information is in the file from the probation authorities. He makes a report which is submitted to the Parole Board; yet, the parole officer is never consulted by the Commissioner and, indeed, since he does not know the inmate-applicant, the Commissioner could not seem to be helped by the parole officer's presence.

The inmates are not given access to their conditional release files, which in itself seems to be a denial of due process. See, e.g., United States ex rel. Carson v. Taylor, ____ F. 2d _____, Civil No. 1029 (2d Cir., July 22, 1976), holding, inter alia, that due process requires that a parolee be afforded access to documents that will be introduced against him at a revocation hearing, unless the Parole Board meets the burden of establishing good cause for their nondisclosure. The lack of such access seems to have led to injustice involving one of the named plaintiffs who had another inmate's records included in his file. The Parole Commissioner is too burdened to be expected on his own to notice such errors (and apparently in this case he did not). The parole officer assumes no responsibility for presenting the inmate's case. As Mr. Dorsey stated, the parole officer's report is neutral and everything is left pretty much up to the Commissioner. Fundamental fairness cannot be achieved under present procedures for processing conditional release applications unless the inmate-applicant is given the opportunity to appear in person before the Board and to discuss his case with the Commissioner.

The state has resisted the right to a personal appearance on applications for conditional release, arguing that the cost of such hearings would be prohibitive, and the demand on the Commissioner's time unduly burdensome given the present size of the Board, the number of conditional release applications processed annually, and the already severe constraints on Board members' time by virtue of their other duties. It is clear, however, that neither financial nor administrative difficulties suffice to excuse the state from according basic due process rights to inmates. See, e.g., Detainees of Brooklyn House of Detention v. Malcolm, 520 F. 2d 392, 399 (2d Cir. 1975); Rhem v. Malcolm, 507 F. 2d 333, 341 n.20 (2d Cir. 1974).

The trend towards requiring that basic due process safeguards be accorded in parole revocation and grant proceedings is to protect inmates from bureaucratic arbitrariness and caprice, and from actions grounded upon impermissible considerations. See, Haymes v. Regan, supra, 525 F. 2d at 544; United States ex rel. Johnson v. Chairman of New York State Board of Parole, supra, 500 F. 2d at 929; see also, Cardaropoli v. Norton, 523 F. 2d 990, 998-9 (2d Cir. 1975); Parole Release Decisionmaking and the Sentencing Process, 84 Yale L.J. 810 (1975). Moreover, unless we are resigned to

accept recidivism as a universal fact of incarceration, the public interest is furthered by adopting orderly and fair procedures for dealing with a prisoner's expectation of liberty.

The state's contention that a 29% ratio of success for conditional release applicants as demonstrated by 1974 statistics, as against 75% for parole applicants, as found in the Johnson case, supra, does not give rise to an expectation warranting due process protection. It is the New York Penal Law §70.40(2) that posits in the inmate serving a definite sentence, an expectation of freedom after sixty days of incarceration, and that expectation cannot be quantified as warranting or not warranting due process protection based upon fulfillment percentiles pursuant to Parole Board action. Thus, the conclusion in Johnson that procedures for the grant of release from incarceration as well as revocation of release must be clothed with some degree of due process is applicable to conditional release applicants as well as parole applicants.

Accordingly, with respect to plaintiffs' claims for injunctive relief, it is hereby ordered that:

(1) Defendants institute appropriate procedures to insure that conditional release applications be processed in order of eligibility. Applications are to be processed within 60-90 days of the arrival of an inmate on Rikers Island;

(2) The Board is to provide to each inmate whose application for conditional release is denied or deferred, a written statement of the reasons for such denial or deferral, together with a written statement of the facts relied on in reaching the decision.

(3) Applicants for conditional release are to be accorded the right to a personal appearance before the Commissioner or Commissioners responsible for deciding on the disposition of his application.

SO ORDERED.

Dated: New York, New York
July 30, 1976

Robert L. Carter

ROBERT L. CARTER
U.S.D.J.

FOOTNOTE

1/ .

It should be noted that §214 of the New York Correction Law was recently amended by the addition of subdivision six to require the Parole Board to inform each prisoner denied parole of "the facts and reason or reasons for such denial."